

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 24-11462-RGS

CORTNEY DUNLAP,
Petitioner

v.

WARDEN FMC DEVENS,
Respondent

ORDER ON REPORT AND RECOMMENDATION
OF THE MAGISTRATE JUDGE

January 6, 2025

STEARNS, D.J.

I agree with Magistrate Judge Levenson's thoughtful (and sympathetic) analysis of the substance of the petition and his ultimate conclusion that the decision of the Bureau of Prisons (BOP) to deny petitioner Earned Time Credits (ETCs) under the First Step Act (FSA) for the time that he was detained in a non-BOP facility while awaiting a hearing on a writ of habeas corpus in an unrelated matter, while arguably unfair, was not unlawful. In enacting the FSA, Congress intended ETCs as an incentive for inmates to participate in BOP-approved rehabilitation programs. As is true with many legislative enactments of its type, Congress left certain

lacunae for the administering agency to fill. As pertinent here, the FSA leaves it to the BOP to implement rules for determining when an inmate is “successful participating” in BOP-approved programming. The pertinent portion of the rule as promulgated excludes credit for an inmate’s participation in programming while temporarily transferred to the custody of another institution while being transported pursuant to a writ. While Magistrate Judge Levenson (or I) might have conceivably drafted a fairer rule, as he aptly notes, we are “constrained to consider only whether the Rule, or the BOP’s application of its Rule, contravenes the FSA or otherwise violates Mr. Dunlap’s federal rights.” R&R Dkt # 36, at 12. As he concludes, and I agree, it does not. Consequently, the Recommendation is ADOPTED, and the Respondent’s motion to dismiss is GRANTED.¹ The

¹ Petitioner did file as “supplemental authority” an Alabama District Court case, *Sharma v. Peters*, 2024 WL 4668135 (M.D. Ala. Nov. 4, 2024). While the case is relevant (although not precedential), neither I nor the Magistrate Judge feel that a different outcome is warranted in this case.

Clerk will now close the case.²

SO ORDERED.

/s/ Richard G. Stearns
UNITED STATES DISTRICT JUDGE

² Petitioner is advised that any request for the issuance of a Certificate of Appealability pursuant to 28 U.S.C. § 2253 of the court's Order granting Respondent's motion to dismiss is also DENIED, the court seeing no meritorious or substantial basis supporting an appeal.